IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

RCRev..No. 414 of 2006()

RCA.109/2004 of II ADDL.DISTRICT COURT,ERNAKULAM
RCP.39/2000 of ADDL.MUNSIFF & RENT CONTROLLER,KOCHI
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:
REV.PETITIONER

K.A.SEBASTIAN,
VIII/1758, KOOVAPADAM, KOCHI-2.

BY ADV. SRI.K.N.SIVASANKARAN
SRI.V.V.ASOKAN
SRI.SUNIL SHANKER

RESPONDENTS:
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1. M.A.PAUL, MADAPARAMBIL HOUSE,
CC-9/1248. MANTHRA ROAD, KOCHI-2 EMPLOYED AS
DIESEL MECHANIC IN NATIONAL PETROLEUM
CONSTRUCTION CO.
P.O.BOX NO.2058, ABU DHABI, UAE,
REPRESENTED BY HIS WIFE AND POWER OF ATTORNEY HOLDER
MRS. ALICE PAUL.

2. ALICE PAUL, W/O. M.A. PAUL,
MADAPARAMBIL HOUSE,
CC-9/1248, MANTHRA ROAD, KOCHI-2.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 29/11/2006, ALONG WITH RCR NOS. 412 AND 413 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR & K.R. UDAYABHANU, JJ.

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R.C.R.Nos.412,413 & 414 of 2006

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DATED THIS THE 29TH DAY OF NOVEMBER 2006

ORDER

Abdul Gafoor,J.

The contention of the revision petitioners in these revisions is that the authorities below ought not to have allowed the claim of the landlord under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965(Act 2 of 1965) for short 'the Act' and that under Section 11(8) of the Act which excludes consideration of the ground under Section 11(3). Though the contention raised appear to be sound initially, the chequered history of the case will reveal that this contention cannot be raised from the mouth of these revision petitioners.

2. The respondents-landlords initiated proceedings to get an order of eviction on the ground

of bona fide requirements. They had already obtained two rooms on the first floor from other tenants. The other rooms are additionally required for them to start the business. It was in the above circumstances, the petitions were styled as under Section 11(8) of the Act. The Rent Controller dismissed it. Appeal was taken up by the landlord on the ground that the Rent Control Court ought to have examined the grounds available under Section 11(3) of the Act. On the basis of the pleadings, the Rent Control Appellate Authority confirmed the finding under Section 11(8) of the Act and directed the Rent Controller to examine the ground available under Section 11(3) also and remanded the matter for fresh consideration on that ground. Thus the revision petitioners were aware of that aspect at that stage and the Rent Controller would consider the matter under Section 11(3) of the Act afresh. In spite of that the revision petitioners did not raise their little finger against that remand order. Therefore, the Rent

Controller considered the matter afresh under Section 11(3) of the Act and found that the landlord bonafide needs of the premises occupied by them for conducting the business and ordered eviction. This was carried in appeal by the revision petitioners unsuccessfully. Therefore, these revision petitions are filed.

3. Having faced fresh trial based on the remand order as mentioned above to which the revision petitioners were parties, on the ground available under Section 11(3) of the Act of bona fide need of the landlord, they cannot now turn round and contend that that ground was not available any more for the landlord because of the incorporation of Section 11(8) in the petition. If that contention was available, it would have been agitated at the first stage, when one among the points considered by the appellate authority at the 1st instance was whether the landlords ought to be granted eviction under Section 11(3) of the Act. Therefore, it cannot be

found that the order assailed are illegal, improper or irregular on this ground.

4. As regards the petitioners in RCR.413 & 414/2006, the contention of the tenants that they are only depending on the income derived from their business conducted on the rented premises have been accepted by both the authorities below. But the other limb of the second proviso to Section 11(3) of the Act regarding availability of other vacant premises was found against the tenants. Therefore, they were not granted the protection of the second proviso. There is evidence about the availability of other vacant buildings in the nearby premises. They cannot assail that finding.

5. In the aforesaid circumstances, the revision petitions lack merit and are liable to be dismissed. We do so.

As the revision petitioners are conducting business in the premises from where they are ordered to be evicted, they sought for reasonable time for

shifting their business. In the nature of the business conducted by the respective revision petitioners/tenants, we are of the view that they shall be granted four months time to vacate the building on condition of their filing an affidavit undertaking to give vacant possession of the building on or before 29-3-2007 in the execution court and on paying entire arrears of rent accrued and the rent payable during the time allowed in this order.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks.

TRUE COPY

P.S.TO JUDGE